IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 595 OF 2006

IN

P.I.L. WRIT PETITION NO. 2445 OF 2004

Janhit Manch through its President
Bhagvanji Raiyani & Ors. .. Petitioners

V/s

Union of India & Ors. .. Respondents

And

Surendrakumar S. Thakur & Ors. .. Interveners

Mr.V.A.Thorat with Mr.A.R. Pande for the Interveners.

Mr.K.K. Singhvi with Mrs.P.A. Purandare for Respondent No.6.

Mr.K.R. Belosay, Government Pleader, for Respondent No.2.

Mr.Rajiv Chavan for Respondent No.4.

Mr.Shiraz Rustomji, Amicus Curiae for the Petitioners.

CORAM : H.L. GOKHALE, ACG. CJ. &
V.M. KANADE, J.

DATE : 31ST JANUARY 2007

P.C. :

1. Heard the counsel for the parties.

2. This motion is taken out by the Developers of a property who are developing it in the precincts of the

caves situated in Jogeshwari (East). The motion seeks a direction to withdraw the stop work notices issued to the Interveners in view of the orders passed by this Court in the writ petition not to permit any construction in the prohibited area around the caves.

3. The main petition has been filed with a view to protect the caves and the precincts thereof and to direct the Archaeological Survey of India and the authorities concerned to take necessary steps. Orders have been passed already in the main petition prohibiting any construction in the prohibited and regulated areas. Mr.Thorat for the Interveners points out that a similar construction was objected and restrained in the case of one Goraksha Enterprises. They took out Notice of Motion No.577 of 2006 which was allowed to a limited extent. The applicants pointed out that though the construction was in the prohibited area, it was nearly completed to the extent of 95% of the proposed construction. Taking this aspect into account, a Division Bench by its order dated 5th October 2006 permitted the interveners to complete the construction as per the sanctioned plans, however restrained them from obtaining any occupation certificate. It was also added that the completion of construction will not create any equity in favour of the interveners. Mr.Thorat is seeking a similar order.

4. Mr.Rustomji, Amicus Curiae for the Petitioners, points out that the order on the motion of Goraksha Enterprises was passed on 5th October 2006 principally in view of a decision rendered by a Division Bench of this Court on 5th July 2006 in M/s Naiknaware & Associates v. Union of India reported in 2006(5) ALL M.R. 54. The Division Bench had gone through the relevant provisions of the Archaeological Sites and Remains Act, 1958 and had permitted construction in certain areas around Shaniwarwada and Agakhan Palace at Pune. He points out that subsequently this judgment was carried to the Apex Court and the same has been stayed. His submission is that since the disputed construction is in the regulated area, the construction cannot be permitted unless the permission of the Archaeological Survey of India is obtained.

5. Inasmuch as a report of the Committee with respect to the regulated area is already received and the views of the Archaeological Survey of India thereon are expected, in our view, the decision permitting this construction further will depend on the decision to be arrived at after receiving the opinion of the Archaeological Survey of India.

6. In the circumstances, we allow intervention of

the Interveners in the writ petition, which is prayer (a) of this motion. As far as the other prayers are concerned, they will be heard and decided along with the main petition. Motion stands adjourned to 28th February 2007.

ACTING CHIEF JUSTICE

V.M. KANADE, J.